

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

MIDCONTINENT COMMUNICATIONS,

*Plaintiff,*

v.

MCI COMMUNICATIONS SERVICES, INC.  
d/b/a VERIZON BUSINESS,

*Defendant.*

Case No. 4:16-cv-04070-KES

Hon. Karen E. Schreier

**DEFENDANT'S MOTION TO DISMISS  
THE COMPLAINT IN PART**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendant moves to dismiss the Complaint in part. More particularly, Defendant moves to dismiss the Complaint's second cause of action for unjust enrichment with prejudice, as that claim is barred as a matter of law by the filed-rate doctrine, Federal Communications Commission precedent, and established case law. Defendant also moves to dismiss the Complaint's third cause of action for a declaratory judgment to the extent the claim seeks relief on any basis other than Plaintiff's tariffs or the parties' Switched Access Service Agreement.

This Motion to Dismiss is supported by the concurrently-filed Brief in Support of Defendant's Motion to Dismiss the Complaint in Part.

Dated this 8<sup>th</sup> day of July, 2016.

WOODS, FULLER, SHULTZ & SMITH P.C.

By /s/ Tim R. Shattuck

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